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Attorneys for Defendant ExamOne World Wide, Inc.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

JEANNIE KELLER,

Plaintiff,

v.

EXAMONE WORLD WIDE, INC.,  
JOHN DOES 1-5, and PRACTICE  
ENTITIES XYZ,

Defendants.

Cause No. \_\_\_\_\_

NOTICE OF REMOVAL

TO: Jeannie Keller, Plaintiff; Buxbaum Daue, PLLC, Plaintiff's Attorneys; and  
Cascade County Clerk of District Court:

Defendant ExamOne World Wide, Inc. respectfully gives notice and shows  
the Court:

1. On August 17, 2015, a Complaint was filed naming Defendant ExamOne World Wide, Inc. in the Montana Eighth Judicial District Court, Cascade County entitled *Jeannie Keller v. ExamOne World Wide, Inc., John Does 1-5, and Practice Entities XYZ*, Cause No. BVD-15-658. The Summons and Complaint were not properly served on Defendant, and Defendant first received notice of the Complaint and Summons on November 23, 2015. This Notice is therefore timely pursuant to 28 U.S.C. § 1446. *See Quality Loan Serv. Corp. v. 24702 Pallas Way*, 635 F.3d 1128, 1133 (9th Cir. 2011) (citing *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-348 (1999) (“[A] named defendant’s time to remove is triggered by simultaneous service of the summons and complaint, or receipt of the complaint, ‘through service or otherwise,’ after and apart from service of the summons, but not by mere receipt of the complaint unattended by any formal service.”). Copies of the Civil Cover Sheet, Complaint, Summons, and the unexecuted Notice And Acknowledgement of Receipt of Summons, and Defendants’ Answer are attached hereto as Exhibits A, B, C, D, and E.

2. Plaintiff has filed a motion for default judgment (although service was not properly effectuated and no default has been entered by the Clerk) and this matter has been fully briefed. However, the State Court has not yet ruled on this motion. Pursuant to Local Rule 3.3 “[m]otions and other requests directed to the

State Court are automatically terminated upon removal but may be refiled in this Court.”

3. The Complaint on file herein does not state the amount of damages being sought by Plaintiff. However, Plaintiff is seeking damages for both past and future medical treatment to treat an alleged permanent condition, as well as lost wages from an alleged inability to work due to her injury, damages for pain and suffering, and damages for loss of established course of life, which together would exceed the sum of Seventy Five Thousand and No/100 Dollars (\$75,000.00), exclusive of interest and costs.

4. Plaintiff, Jeannie Keller, at the time this action was commenced was and still is a resident and citizen of Cascade County, State of Montana.

5. Defendant, ExamOne World Wide, Inc., at the time this action was commenced was and still is a corporation incorporated under the laws of the State of Pennsylvania, with its principal place of business in Lenexa, Kansas and was not and is not a citizen of the State of Montana, wherein this action was brought.

6. The above-described action is one in which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1332, and is one which may be removed to this Court by the Defendant herein, pursuant to the provisions of 28 U.S.C. § 1441 in that it is a civil action wherein the matter in controversy exceeds

the sum or value of Seventy Five Thousand and 00/100 Dollars (\$75,000.00), exclusive of interest and costs, and is between citizens of different states.

7. Pursuant to 28 U.S.C. § 1441(b)(1), for purposes of removal the citizenship of defendants sued under fictitious names shall be disregarded.

WHEREFORE, Defendant prays that the action now pending against ExamOne World Wide, Inc. in the Montana Eighth Judicial District Court, Cascade County, be removed therefrom to this Court.

DATED this 18th day of December, 2015.

/s/ Justin K. Cole  
\_\_\_\_\_  
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2015, a copy of the foregoing document was served on the following persons by the following means:

\_\_\_\_\_ Hand Delivery  
\_\_\_\_\_ 1 Mail  
\_\_\_\_\_ Overnight Delivery Service  
\_\_\_\_\_ Fax (include fax number in address)  
\_\_\_\_\_ E-Mail (include email in address)

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Attorneys for Plaintiff
2. Clerk of Court  
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\_\_\_\_\_  
/s/ Justin K. Cole  
Attorneys for Defendant